

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

Case No. 19-577

JUDITH ANN HUTHNANCE ROZIER,
Individually and as Independent Executrix of
the Succession of John S. Rozier, IV,

Petitioner,

v.

PRUDENTIAL INSURANCE
COMPANY OF AMERICA and
MALCOLM DALE HARRINGTON,

Defendants.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA'S
NOTICE OF REMOVAL OF CIVIL ACTION

Defendant, The Prudential Insurance Company of America, sued incorrectly herein as “Prudential Insurance Company of America” (“Prudential”), through its undersigned counsel, pursuant to 28 U.S.C. §§ 1441 and 1446, respectfully notices the removal of the captioned action to the United States District Court for the Western District of Louisiana from the Alexandria City Court, Parish of Rapides, State of Louisiana. The grounds for removal are as follows:

1. Upon information and belief, on or about March 15, 2019, Petitioner Judith Ann Huthnance Rozier, Individually and as Independent Executrix of the Succession of John S. Rozier, IV (“Petitioner”) filed a Petition in the Alexandria City Court, Parish of Rapides, State of Louisiana, captioned *Judith Ann Huthnance Rozier, et al., v. Prudential Insurance Company of America, et al.*, Civil Docket Number 143457 (the “State Court Action”). A copy of the Petition was first received by Prudential, through an authorized agent of process, on April 5, 2019, and is annexed hereto as **Exhibit A** in accordance with 28 U.S.C. § 1446(a).

2. This Court has original federal question jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1331 and 29 U.S.C §1132 of the Employee Retirement Income Security Act of 1974 (“ERISA”), which gives the District Court jurisdiction to hear civil actions relating to benefits due under the terms of an employee welfare benefit plan brought by a participant, beneficiary or fiduciary. The group life insurance policy at issue in this action is an employee welfare benefit plan governed by ERISA. This basis for jurisdiction is consistent with general federal question jurisdiction under 28 U.S.C. § 1331, which gives the District Court jurisdiction over actions arising under the laws of the United States. For the purpose of processing this claim, Prudential had a degree of discretionary authority consistent with the definition of fiduciary set forth in 29 U.S.C. § 1002(21)(A)(iii).

THE PARTIES

3. Upon information and belief, Petitioner is a citizen and domiciliary of the Parish of Rapides, Louisiana.

4. Upon information and belief, Defendant Malcolm Dale Harrington is a citizen and domiciliary of the Parish of Rapides, Louisiana.

5. Defendant Prudential was at the time the State Court Action was commenced, and currently is, a corporation organized and existing under the laws of New Jersey with its principal places of business in New Jersey and, therefore, is a citizen of New Jersey.

THE STATE COURT ACTION

6. On or about April 5, 2019, Prudential received service of the State Court Action by service through an authorized agent of process. Accordingly, this Notice of Removal, filed within the thirty-day period prescribed by 28 U.S.C. § 1446, is timely.

7. The Petition alleges that Petitioner is entitled to life insurance benefits in connection with Group Life Insurance Policy Number G-51377, an ERISA-regulated employee welfare benefits plan which was issued by Prudential to the American Institute of Certified Public Accountants Trust, (the “Plan”), due as a result of the death of John S. Rozier, IV (the “Insured”), who was insured under the Plan. *See Petition*.

THIS COURT’S REMOVAL JURISDICTION

8. Title 28 U.S.C. § 1441(a) and (c) and Title 28 U.S.C. § 1331 provide the basis for removal jurisdiction to this Court. Petitioner alleges claims to recover payment for life insurance benefits under an employee welfare benefit plan which is governed by the federal law of ERISA.

9. The State Court Action involves Petitioner’s claims for distribution of ERISA Plan benefits payable as a result of the death of the Insured.

10. ERISA preempts any state law claims alleged in Petitioner’s action and provides the exclusive administrative and federal remedies for resolution of claims relating to ERISA plans. See ERISA § 502 (a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B); see also Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987). A cause of action filed in state court which is preempted by ERISA and falls within the scope of Section 502 (a)(1) is removable to federal court under 28 U.S.C. § 1441(a) as an action arising under federal law. See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987). Therefore, this Court has original federal jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).

11. The timing requirements of 28 U.S.C. § 1446(b) have been satisfied in that this Notice of Removal has been filed with this Court within thirty (30) days after receipt of the Petition by Prudential. The time for filing this Notice of Removal has not expired under 28 U.S.C. § 1446(b).

12. Defendant Malcolm Dale Harrington, through counsel, has provided his consent to the removal of this action to the United States District Court for the Western District of Louisiana from the Alexandria City Court, Parish of Rapides, State of Louisiana.

13. The United States District Court for the Western District of Louisiana is the appropriate court to which this action should be removed because this district is the district embracing actions filed in the Alexandria City Court, Parish of Rapides, State of Louisiana.

14. A true and correct copy of this Notice of Removal is being served upon Petitioner and the other Defendant as required by law under 28 U.S.C. § 1446(d).

15. A true and correct copy of this Notice of Removal is also being filed promptly with the Clerk of the Alexandria City Court, Parish of Rapides, State of Louisiana, in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Prudential hereby removes this action, currently pending in the Alexandria City Court, Parish of Rapides, State of Louisiana, to the United States District Court for the Western District of Louisiana.

Dated: May 3, 2019

Respectfully submitted,

/s/ Judy L. Burnthorn

Judy L. Burnthorn (#17496)

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Attorneys for Plaintiff,

***Counsel for Defendant The Prudential
Insurance Company of America***

CERTIFICATE OF SERVICE

I certify the foregoing pleading has been served on **John W. Munsterman, The Munsterman Law Firm, L.L.C.**, 5501 A John Eskew Drive, Alexandria, Louisiana 71303, and **Charles S. Weems III, Gold Weems Bruser Sues & Rundell**, 2001 MacArthur Drive, P.O. Box 6118, Alexandria, LA 71307-6118 on this **3rd day of May, 2019**.

/s/ Judy L. Burnthorn

Judy L. Burnthorn